

# Bill 40 Testimony

**MISC. COM. 240**

---

**From:** CLK Council Info  
**Sent:** Tuesday, May 5, 2020 6:06 PM  
**Subject:** Council/Public Hearing Speaker Registration/Testimony

## Speaker Registration/Testimony

Name	Elisabeth wilson
Phone	8084788204
Email	Betsy@alakona.com
Meeting Date	04-06-200y
Council/PH Committee	Council
Agenda Item	BILL 40
Your position on the matter	Oppose
Representing	Self
Organization	
Do you wish to speak at the hearing?	No
Written Testimony	strong opposition to Bill 40 and 37.
Testimony Attachment	
Accept Terms and Agreement	1

IP: 192.168.200.67



---

**A BILL FOR AN ORDINANCE**

---

RELATING TO COMMUNITY WORKFORCE AGREEMENTS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the provisions of Ordinance 19-24, relating to community workforce agreements.

SECTION 2. Chapter 2, Article \_\_\_\_, Revised Ordinances of Honolulu 1990, as enacted by Ordinance 19-24, is amended to read as follows:

**"Article \_\_\_\_. Community Workforce Agreements**

**Sec. 2-\_\_\_\_.1 Definitions.**

As used in this article:

"Agreement to be Bound" means the agreement attached to the Community Workforce Agreement that ~~[must]~~ may be executed by ~~[each and every]~~ a Contractor as a condition of working on a Covered Project, under which ~~[each and every]~~ a Contractor agrees to be bound by the CWA.

"Community Workforce Agreement" or "CWA" means the multi-craft collective bargaining agreement between the city, the Hawaii Building and Construction Trades Council and its affiliated labor unions, and the Hawaii Construction Alliance and its affiliated labor unions, that governs the terms and conditions of employment on ~~[all]~~ Covered Projects.

"Contractor" means any individual, firm, partnership, corporation, or other business entity (including but not limited to a general contractor, project manager, construction manager, or primary employer, or combination thereof), including joint ventures, and any successors and assigns of the foregoing, that has entered into a contract to perform, assign, award, or subcontract any part of the construction work on a Covered Project, and all contractors and subcontractors of any tier.

"Covered Work" means all work covered by Master Agreements of the Unions.

"Covered Project" means any large-scale public works project, including any police, fire, emergency services, erosion, rock-fall mitigation, road, storm-water or sewer infrastructure, and pump station projects, in which there is a contract in excess of \$2,000,000 for the building, erection, installation, or assembly of a new structure, building, or facility, or of new infrastructure, including any such projects receiving



## **A BILL FOR AN ORDINANCE**

funding from a bond issuance of the city, and any other public works project where the city has determined that delay in completing the project may lead to interruption or delay of services or use of facilities that are important to the essential operations or infrastructure of the city; provided, however, that the term does not include the routine operation or maintenance of a structure, building, or facility, or of new infrastructure.

"Local Area" means the City and County of Honolulu.

"Maintenance" means the upkeep of a structure, building, or facility, or of infrastructure, to preserve the original functional and operational state of the structure, building, facility, or infrastructure, and includes any task that has been traditionally and historically performed by public workers in or upon structures, buildings, facilities, and infrastructure.

"Master Agreement" means the master collective bargaining agreement of each Union signatory to the Community Workforce Agreement.

"Operation" means activities related to the normal performance of the functions for which a structure, building, facility, or infrastructure is intended to be used.

"Union" includes the Hawaii Building and Construction Trades Council ("HBCTC") and the Hawaii Construction Alliance ("HCA"), and their affiliated labor organizations, acting on their own behalf and on behalf of their own respective affiliates and member organizations, whose names are subscribed to the Community Workforce Agreement. The parties to the Community Workforce Agreement may mutually agree, in writing, to amend or modify the list of affiliated labor organizations in the event there is a change in affiliation. Nothing in this article is intended to imply that the city has the authority to approve which local unions may affiliate with the HBCTC or HCA.

~~[Sec. 2 \_\_\_\_ 2 Required terms for citywide community workforce agreement.~~

~~The citywide Community Workforce Agreement ("CWA") must include the following terms:~~

- ~~(1) The CWA must be binding on all Contractors at all tiers, and all Contractors shall condition the engagement of each subcontractor on the subcontractor's execution of an Agreement to be Bound;~~
- ~~(2) The CWA must include all construction work on a Covered Project that is included in a Master Agreement;~~



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 40 (2020)

---

**A BILL FOR AN ORDINANCE**

---

- (3) ~~The City may select any qualified bidder for its award of a contract for a Covered Project without regard to whether it is otherwise a signatory to a Master Agreement. The bidder need only be willing, ready and able to execute and comply with the terms of the CWA in order to be awarded a contract on a Covered Project;~~
- (4) ~~The CWA must prohibit discrimination on any basis prohibited by federal, state, or local law;~~
- (5) ~~Alleged violations of the CWA must be resolved by a mandatory, final, and binding arbitration procedure;~~
- (6) ~~The Unions shall refrain from strikes, picketing, and other labor actions on or arising from a Covered Project and the Contractors shall refrain from lockouts or similar actions on or arising from a Covered Project;~~
- (7) ~~Contractors shall request referral of residents of the Local Area, and the CWA must contain a goal that not less than eighty percent of all hours on Covered Projects will be worked by residents of the Local Area. To the extent allowed by law, and consistent with the Unions' hiring hall provisions, as long as they possess the requisite skills and qualifications, residents of the Local Area shall be referred to Contractors working on Covered Projects. In the event there are insufficient residents in the Local Area to meet the needs of Covered Projects, Contractors may request referral of residents from other counties in the State of Hawaii;~~
- (8) ~~All apprentices must be indentured in a state approved apprenticeship program;~~
- (9) ~~Incorporation of the "Helmets to Hardhats" program, which creates pathways for careers in construction to returning veterans;~~
- (10) ~~The wages, hours, shift schedules, holidays, and other terms and conditions of employment must be governed by the Master Agreement of the applicable craft; and~~
- (11) ~~The CWA must be in effect for a five-year term, and unless otherwise ordered by the City, will roll over for successive five-year terms thereafter. The CWA must apply to each Covered Project until completion of the project.~~



---

**A BILL FOR AN ORDINANCE**

---

**~~Sec. 2-\_\_\_3- Local business preference.~~**

~~The city has an interest in the use of local businesses in order to support the local economy and local infrastructure development. Therefore, to the maximum extent possible, Contractors on Covered Projects are encouraged to contract with businesses that are owned by residents of the city or have their primary business located within the city.~~

**~~Sec. 2-\_\_\_4- Contract awards.~~**

~~The award of a contract on a Covered Project must be conditioned upon the execution of an Agreement to be Bound by the CWA, and all Contractors on all Covered Projects must execute an Agreement to be Bound by the CWA as a precondition of performing, assigning, awarding, or subcontracting work on a Covered Project.]~~

**Sec. 2- .2 Contract awards.**

The award of a contract on a Covered Project may be conditioned upon the execution of an Agreement to be Bound by the CWA, and all Contractors on all Covered Projects so conditioned must execute an Agreement to be Bound by the CWA as a precondition of performing, assigning, awarding, or subcontracting work on a Covered Project.

**Sec. 2- .3 Required terms for citywide community workforce agreement.**

In the event a Community Workforce Agreement is required, the CWA must include the following terms:

- (1) The CWA must be binding on all Contractors at all tiers, and all Contractors shall condition the engagement of each subcontractor on the subcontractor's execution of an Agreement to be Bound;
- (2) The City may select any qualified bidder for its award of a contract for a Covered Project without regard to whether it is otherwise a signatory to a Master Agreement. The bidder need only be willing, ready and able to execute and comply with the terms of the CWA in order to be awarded a contract on a Covered Project;
- (3) The CWA must prohibit discrimination on any basis prohibited by federal, state, or local law;



**A BILL FOR AN ORDINANCE**

---

- (4) Alleged violations of the CWA must be resolved by a mandatory, final, and binding arbitration procedure;
- (5) The Unions shall refrain from strikes, picketing, and other labor actions on or arising from a Covered Project and the Contractors shall refrain from lockouts or similar actions on or arising from a Covered Project;
- (6) All apprentices must be indentured in a state-approved apprenticeship program;
- (7) Incorporation of the "Helmets to Hardhats" program, which creates pathways for careers in construction to returning veterans; and
- (8) The CWA must be in effect for a five-year term, and unless otherwise ordered by the City, will roll over for successive five-year terms thereafter. The CWA must apply to each Covered Project until completion of the project."

SECTION 3. SECTION 3 of Ordinance 19-24 is amended to read as follows:

"SECTION 3. ~~[No later than 90 days after]~~ After the effective date of this ordinance, the Mayor ~~[shall:]~~ shall

- ~~[(1) Negotiate]~~ negotiate with the Unions and execute on behalf of the City a Community Workforce Agreement ~~[to apply to all Covered Projects; or~~
- ~~(2) Seek an extension of time from the Council, if necessary to complete negotiations. However, the Mayor is directed to negotiate and execute the Community Workforce Agreement with all deliberate speed. The Council may grant the extension of time by adopted resolution]."~~

SECTION 4. Consistency with Hawaii State Constitution. All "covered projects" and all "community workforce agreements," as those terms are defined in Chapter 2, Article \_\_\_\_, Revised Ordinances of Honolulu 1990, as enacted by Ordinance 19-24 and as amended by this ordinance, shall comply with and be in accordance with the right to organize for the purpose of collective bargaining guaranteed under Article XIII, Sections 1 and 2, of the State Constitution, and the operation and maintenance of facilities that are constructed pursuant to such community workforce agreements shall be consistent with the merit principle under Article XVI, Section 1, of the State Constitution.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 40 (2020)

---

**A BILL FOR AN ORDINANCE**

---

**SECTION 5. Conflict with federal or Hawaii State law.** Nothing in this ordinance shall be interpreted or applied so as to conflict with federal or State law, or to create any requirement, power, or duty in conflict with any federal or State law.

**SECTION 6. Severability.** If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION 7. Ordinance material to be repealed is bracketed and stricken and new material is underscored.** When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.





**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 40 (2020)

**A BILL FOR AN ORDINANCE**

---

SECTION 8. This ordinance takes effect on May 30, 2020.

INTRODUCED BY:

  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DATE OF INTRODUCTION:

APR 7 2020

\_\_\_\_\_  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu



**TESTIMONY TO THE HONOLULU CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU HALE, COUNCIL CHAMBERS  
10:00 AM  
May 6, 2020**

**RE: Bill No. 40, Relating to Community Workforce Agreements.**

Honorable Ikaika Anderson, Chair, Ann Kobayashi, Vice Chair and members of the Council:

My name is Dwight Mitsunaga, 2020 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii supports Bill No. 40, which proposes to amend Ordinance 19-24 by making Community Workforce Agreements optional as opposed to mandatory, as required in the existing Ordinance 19-24.

We believe the proposed amendment would create more opportunities for all businesses involved in the City's construction projects.

We are in support of Bill No. 40 and appreciate the opportunity to provide comments on this matter.

tel. 808-629-7501  
fax. 808-629-7701

94-487 Akoki St., Ste 213  
Waipahu, HI 96797

[www.biahawaii.org](http://www.biahawaii.org)  
[info@biahawaii.org](mailto:info@biahawaii.org)



# JAS. W. GLOVER, LTD.

GENERAL CONTRACTORS

License No. ABC-3

May 5, 2020

**TO:** Honorable Council Member Ikaika Anderson, Chair, Ann Kobayashi, Vice Chair, and Council Members Carol Fukunaga, Brandon Elefante, Joey Manahan, Ron Menor, Kymberly Pine, Heidi Tsuneyoshi, and Tommy Waters

**SUBJECT:** **Strong Opposition to Bill 40 – Community Workforce Agreements**  
**Strong Support to Repeal Ordinance 19-24 – Community Workforce Agreements**

Dear Chair Anderson, Vice Chair Kobayashi, and Council Members,

Jas. W. Glover, Ltd. is a native Hawaiian owned company that has been proudly serving the City and County of Honolulu, The Territory and State of Hawaii, and Federal agencies in Hawaii since 1935. Our license number, ABC-3, is the lowest license number in the state.

**We strongly oppose Bill 40.**

Bill 40 is not needed in our construction industry. The current laws in Hawaii dictate that all contractors on City and County and State projects follow HRS 104, which specifies the wages and fringe benefit amounts to be paid to all employees. We are required to submit certified payrolls to the contracting agency for verification and certify that 80% of the workers are local residents. This is a lower standard than practiced by our company which uses 100% local residents. Bill 40 will increase the costs to the City and County and to all taxpayers. We will not be able to bid on any project that requires a CWA/PLA because it is unfair to our employees and their families. With less competition on bids, costs for all projects will increase to the detriment of the taxpayers. The current public procurement practices provide open competition among all qualified firms, regardless of the labor policies of the employers or the union representation choices of their employees. This best serves the taxpayers of the City and County of Honolulu. This bill will jeopardize Federal funding on City and County projects. We would also suggest that the union trades police their own member companies regarding certified payrolls. We have had to instruct and help correct some of our union subcontractors certified payrolls for many years.

There does not seem to be a legal difference between the concerns expressed in the Mayor's 10/24/19 letter regarding Bill 37 (now Ordinance 19-24) and the following clause in Bill 40:

**Sec. 2- .2 Contract awards.**

The award of a contract on a Covered Project may be conditioned upon the execution of an Agreement to be Bound by the CWA, and all Contractors on all Covered Projects so conditioned must execute an Agreement to be Bound by the CWA as a precondition of performing, assigning, awarding, or subcontractors work on a Covered Project.

If passed through the City Council, this will definitely be challenged in Bill 40, will stop work, and will jeopardize Federal funding for all projects.

**Honolulu**

P.O. Box 579 • Honolulu, HI 96809  
tel: (808) 591-9977 • fax: (808) 591-9174

**Hilo**

890 Leilani St. • Hilo, HI 96720  
tel: (808) 935-0871 • fax: (808) 961-9237

**Kona**

P.O. Box 4116 • Kailua-Kona, HI 96745  
tel: (808) 329-4113 • fax: (808) 326-6017

**Lihue**

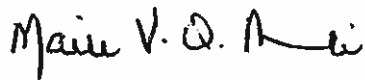
P.O. Box 1929 • Lihue, HI 96766  
tel: (808) 245-3609 • fax: (808) 246-6209

**We strongly support the repeal of Ordinance 19-24.**

Ordinance 19-24 was flawed as Bill 37 from the beginning. It is against commerce, contrary to procurement law, unfair, and it prevents long time Hawaii contractors (also taxpayers) from bidding on City and County projects. Not only does it discriminate against Hawaii residents who work in the construction industry, it also will jeopardize Federal funding of projects in Hawaii. The majority of the construction industry came out to oppose this bill in October 2019. Despite the obvious discontent with this bill, it was still passed out of the City Council and was not vetoed by the Mayor. The only testimony in support was from a small handful of union labor organizations.

In these uncertain times of a National Emergency, a State of Hawaii and a City and County of Honolulu stay at home order, the City Council should not be hearing and passing any bills that are this consequential to our construction industry without direct input from those that are affected. Those individuals include all construction industry employees and employers, and all citizens of the City and County of Honolulu. We request that you repeal this ordinance immediately.

Sincerely,

A handwritten signature in black ink that reads "Maile V.O. Romanowski". The signature is written in a cursive, flowing style.

Maile V.O. Romanowski  
President

Aloha, Chair [Joey] Manahan, Vice Chair [Brandon] Elefante and other members of the Honolulu City Council Committee on Budget. I am submitting testimony today in strong opposition to Bill 37 (2019) — RELATING TO COMMUNITY WORKFORCE AGREEMENTS. I would have liked to have been there in person to deliver my testimony, but I am on travel outside of Hawaii.

As a small, local and woman-owned, disadvantaged (DBE) business in the State of Hawaii I am very concerned about this bill. Our company, Integrated Security Technologies (IST), does a tremendous amount of State and City work – some under the State of Hawaii DBE (disadvantaged business enterprise) program. We have been performing work in Hawaii for over 20 years without issue.

Our employees are non-union, and this proposed bill would essentially exclude us from bidding these projects in the future. That would impact my business along with other DBE companies in Hawaii.

The bill states that “the construction crafts that work on public works projects require a supply of new apprentices to perpetuate those crafts into the future.” I couldn’t agree more. Yet no union in Hawaii has been able to train our labor force with the skillsets we need. Our employees are a cross breed, requiring both electronics skills and IT skills. We train our OWN employees, using our OWN money, right out of high school. These employees have a genuine opportunity for long-term, well-paid careers in the construction industry WITHOUT having to commit years to a union or pay union dues. And we have been a Hawaii Best Places to Work company since 2013, which says a lot about how our employees are treated.

We also offer paid internships, hire military veterans and national guardsmen, and have a “try it before you commit” program (work for two weeks with no commitment to see if you like it). I have even engaged the local community colleges about starting a two-year degree program for potential employees for our industry and other low-voltage industries like fire, building controls, audio/visual, and telecommunications.

Our company has been growing 20% per year and we don’t see any end to the growth potential for our company and our employees – present and future. Do you really want to hurt the small construction businesses in Hawaii, like IST, that supply you with tax revenue?

April 17, 2020

Honolulu City Council  
Members of the Council

**Alakona Corp. testimony in STRONG OPPOSITION to the adoption of Bill 40**

Alakona Corp. stands in strong opposition to Bill 40. We have been opposed to this action since the first Bill 37 was introduced and subsequently to Bill 37 CD1. The unions have maligned the non-union shops with no data to support their contention that non-union shops lack the man power, skill, safety training etc. to perform City and County contracts. Their reasoning is without fact or figures. I have supplied data to the council from the Washington Times article dated April 1, 2019 (attached) that **"PLA's (CWA's) increase the cost of construction between 12 and 18 percent"** and that **PLA's WON'T prevent union members from going on strike**. The unions continue to offer HART as a gleaming example of the success of PLA/CWA's which most tax paying citizens of Honolulu find quite ludicrous, ridiculous and laughable!

1. There is no apparent need for this bill from the stand point of qualified, well trained, contractors for C&C projects. **"This is merely a political move - to create jobs for union labor and steer contracts to unionized contractors supporting their campaigns."**
2. Is the Union testing the loyalty of the council members and attempting to push Bill 37 & 40 through while it still has loyal council members (council members who have received contributions from the unions) on the City Council?
3. Does the union have dwindling membership and feels confident that this bill can force the increase in their membership through CWA's...? If being a union member is so wonderful, unions should have no need to mandate membership through CWA's.

The proposed ordinance would enact sweeping and restrictive hiring conditions on county projects worth more than \$2,000,000 through the implementation of "community workforce agreements." Alakona Corp. is a non- union, woman owned, small business, and as such, would be prohibited from contracting with the City and County of Honolulu on projects worth more than \$2,000,000 UNLESS Alakona Corp signs a CWA . This contract requirement would prohibit Alakona Corp from doing business with the City and County since most construction contracts are in excess of the \$2,000,000 threshold.

Alakona Corp. has been in business for over 37 years and has participated in many projects (totaling more than \$10,000,000) for the City and County of Honolulu. Alakona is non-union and has no desire to

become a union shop. We have a well trained staff and a clean safety record. We pay Davis Bacon wages on all City and County jobs and conform to all requirements of this work. We have always been able to compete through the bidding process for these jobs.

These CWAs, also known as project labor agreements, would drastically limit the use of non-union employees on public projects, thereby reducing competition among bidding contractors and increasing costs for Honolulu taxpayers and in many instances limiting the number of laborers available to accomplish the work in a timely fashion.

It has been noted, in other opposition testimony, that several states that removed their PLA requirements not only lowered their costs, but elicited lower bids from union contractors.

PLA projects in Hawaii have been plagued by cost overruns and delays, for example, the Honolulu rail project or the delays that plagued the University of Hawaii at Hilo College of Pharmacy Building, both of which are PLA projects.

Though the rationale for this legislation is phrased in terms of promoting a skilled local workforce and achieving construction efficiency, there is little evidence that it would have the desired effect. The experience with PLA requirements both in Hawaii and nationwide demonstrates that they are associated with rising costs and delays. Nothing in the experience of PLA projects in Hawaii suggests that they are superior in performance and efficiency than non-PLA projects. On the contrary, instituting \$2,000,000 as the threshold for CWAs to go into effect would only guarantee that county projects would be subject to less competition among bidders and higher prices for taxpayers. CWAs would eliminate the non-union business that have for many years supplied a well-trained, experienced, safe and efficient work force from participating in City & County projects.

With other states abandoning CWAs and PLAs because of their association with uncompetitive bidding, cost overruns and delays, Bill 37 CD1 and its proposed successor Bill 40 would be a step backward, a sign that Honolulu is moving in the wrong direction and once again allowing the unions to dictate procurement regulations to the City & County of Honolulu. **It would confirm the fears of many in the contracting community that the unions are the driving force in local politics!**

Sincerely,

Elisabeth R. Wilson  
President

Attachment: Washington Times, April 1, 2019